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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re H.S. et al., Persons Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.A.,

Defendant and Appellant.

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B236923

(Los Angeles County  
Super. Ct. No. CK88835)

APPEAL from orders of the Superior Court of Los Angeles County,  
Marilyn K. Martinez, Juvenile Court Referee. Affirmed.

Gerard McCusker, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M.  
Owens, Assistant County Counsel, Jacklyn K. Louie, Principal Deputy County Counsel,  
for Plaintiff and Respondent.

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K.A. (mother) appeals dependency orders entered with respect to her three children. We reject mother's claim there was insufficient evidence to support the assertion of dependency jurisdiction and affirm the orders of the juvenile court.

### **FACTS AND PROCEDURAL BACKGROUND**

Mother came to the attention of the Department of Children and Family Services (the Department) in January of 2010, after mother's oldest child, then 18-month-old H.S., twice was found by neighbors walking alone in the street. Then 17-year-old mother and her two children lived with maternal grandmother and maternal aunts, 12-year-old V.A. and 9-year-old F.A., and a maternal uncle, 8-year-old O.A. In May of 2010, a social worker made an unannounced visit and found mother had left H.S. alone at home asleep while mother walked V.A. home from school.

Mother agreed to participate in voluntary family maintenance services and was assigned a case worker and a therapist. Mother stated father had been in a juvenile detention center since August 2010. Mother gave birth to her third child, E.S., in November of 2010. In December of 2010, an extern began working with mother.

On July 25, 2011, a team decision-making meeting was held at mother's home to address her lack of knowledge of an injury to E.S., her failure to provide diapers and formula, her failure to return home on time, her admission she had a poor bond with the children and overall concern for mother's lack of maturity and ability to care for the children. Mother stated she felt isolated and alone, she did not deserve the children and, whether she gave the children up or kept them, she would be "scrutinized." Maternal grandmother stated her belief mother could care for the children with services.

At a second meeting on July 28, 2011, mother and V.A. reported F.A. had chased V.A. from the home with a knife and pierced her skin below the rib area. Maternal grandmother called the police but did not want to press charges. V.A. stated that, about two years earlier, F.A. had stabbed her on the leg. Also, F.A. has stated a desire to kill O.A. Mother additionally reported F.A. pushes H.S. and T.S. and pulls their hair. Mother and V.A. indicated they are afraid of F.A. and vigilant when she is home.

Mother also reported father had perpetrated domestic violence against her, including choking her in public. On one occasion, father choked mother in H.S.'s presence and the child "jumped on the father to stop." Father also called mother derogatory names. Mother reported a history of being abused as a child, stating she was raped on several occasions by maternal grandmother's boyfriend when mother was nine years of age. At the time, mother was responsible for the care of V.A. and F.A., then one and two years of age, while maternal grandmother worked. Mother did not tell maternal grandmother of the abuse until four years later and it was not reported to the police.

During the second meeting, mother and the social team discussed placing the children in shelter care for their safety. However, the issue was avoided when F.A. was hospitalized later that day. The next day, mother opted to move with the children to paternal grandmother's home. Mother reported she did not get along with paternal grandmother but was willing to stay there to avoid losing custody of the children.

On the afternoon of July 5, 2011, paternal grandmother reported mother left home on Saturday, July 2, 2011, with H.S. and had not yet returned. Two hours later, mother called the social worker and said she had been at the home of her uncle and had been unable to contact paternal grandmother. In a conference call among mother, the case worker and a supervising case worker, mother cried, stated she was under pressure to keep the children but felt overwhelmed and agreed to allow the Department to place the children in protective custody.

The Department filed a dependency petition and, at the detention hearing, the juvenile court granted mother monitored visitation.

When interviewed for the jurisdiction report, mother denied that father had choked her. Mother stated she and father argued about father going out with his friends, smoking marijuana and being jealous of how mother dressed. Mother would yell at father and would hit and push him until he was forced to hold her with both arms. Mother admitted father grabbed her by the neck but claimed he was not trying to stop her from breathing. Mother stated that, when she lived near father's friends, father would become jealous and

would choke her in front of his friends. H.S. was present for one incident of domestic violence when the child was one year old.

Mother stated F.A. was hospitalized for approximately three weeks and was now on medication and doing better. Regarding the incident in July, mother at first claimed she forgot to call paternal grandmother but then admitted she did not call because she knew paternal grandmother wanted her to return home. Mother admitted she was overwhelmed by the care of the children and said, “just thinking about it gives me a headache.”

The therapist mother had been seeing since December of 2010 told the investigator mother lacked motivation and was not focused on the goals of therapy. Mother was not currently participating in therapy or answering phone messages. The therapist believed this was related to mother’s new boyfriend.

The social worker was advised father had been found to have committed second degree robbery and had been committed to the California Youth Authority for two years.

An interim review report filed September 26, 2011, indicated the children had been placed in two separate foster homes operated by related foster mothers in the same city to facilitate visitation. Mother agreed to visits at a park monitored by one of the foster mothers. Mother’s visit on August 2, 2011, went well. However, the foster mother reported many distractions during the visit of August 9, 2011, as mother knew many people in the park. Mother’s new boyfriend, L., arrived during the visit and engaged in an argument on the bench next to mother.

On September 9, 2011, the foster mother stated mother has never arrived on time, misses visits and arrives tired. Mother claims she is late for visits because she rides the bus. However, foster mother has seen mother’s boyfriend dropping mother off and taking her home. Foster mother believes mother’s boyfriend makes mother restless and impatient during visits. On September 14, 2011, mother arrived with puffy eyes. Mother’s boyfriend revved the car engine when he dropped mother off. Mother’s boyfriend approached during the visit and asked paternal grandmother in a taunting way whether she was going to speak to him. When L. left, he burned rubber. L. and mother

are in constant conflict and L. appears to get mad easily. The therapist suspected L. was living in mother's home but mother denies it. The therapist believed mother, who remains scattered and disorganized, is being verbally abused by L. and that mother is used to being abused. The report concluded mother continues to lack insight into her lifestyle or case issues.

On October 3, 2011, the juvenile court received the social reports into evidence and sustained the petition as amended under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).<sup>1</sup> The sustained petition alleged: (1) mother and father have a history of engaging in violent altercations and, on one occasion, father choked mother in H.S.'s presence. Further, mother has hit and pushed father. Such violent altercations endanger the children's physical health and safety and place them at risk of physical harm and danger within the meaning of section 300, subdivision (a); (2) mother failed to protect H.S. and T.S. from physical abuse by maternal aunt thereby creating a risk of harm for those children and their sibling within the meaning of section 300, subdivisions (b) and (j); (3) on July 2, 2011, mother left the children with paternal grandmother without making a plan for their care within the meaning of section 300, subdivision (b); and, (4) mother created a detrimental situation for H.S. by leaving the one-year-old child home alone without adult supervision within the meaning of section 300, subdivision (b). Such conduct placed H.S.'s siblings at risk of harm within the meaning of section 300, subdivision (j).

### **CONTENTIONS**

Mother contends there was insufficient evidence to support jurisdiction under section 300, subdivision (a) as there was no evidence of actual harm or injury to any of the children, and jurisdiction was unwarranted under section 300, subdivision (b) because, at the time of the adjudication, there was no evidence of a current risk of harm to the children. Mother further contends that, absent jurisdiction under section 300,

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<sup>1</sup> Subsequent unspecified statutory references are to the Welfare and Institutions Code.

subdivisions (a) or (b), the evidence is also insufficient to support jurisdiction under subdivision (j), which applies where a child's sibling is at risk of harm.

## **DISCUSSION**

### *1. General principles.*

In order to assert jurisdiction, the juvenile court must find a child falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) The Department bears the burden of proving the child comes under the juvenile court's jurisdiction by a preponderance of the evidence. (*Ibid.*; § 355, subd. (a).) In reviewing the sufficiency of the evidence to support a jurisdictional finding, we apply the substantial evidence test. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) "The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm. [Citation.]" (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) However, the juvenile court may consider evidence of past events that make it likely the child currently is at risk of serious physical harm or illness. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.)

### *2. Domestic violence count properly sustained the under section 300, subdivision (a).*

Mother contends there was no evidence of actual harm or injury inflicted nonaccidentally to any of the children and nothing in the record showed that, at the time of the jurisdiction hearing, the children were at risk of serious physical harm from domestic violence by father as he was incarcerated. Therefore, jurisdiction based on domestic violence was inappropriate under section 300, subdivision (a).

Section 300, subdivision (a) applies where a "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. . . ." (§ 300, subd. (a).)

*In re Giovanni F.* (2010) 184 Cal.App.4th 594, affirmed a jurisdictional finding under section 300, subdivision (a) based on a series of incidents of domestic violence on the part of the father. One such incident occurred when the father punched the mother in the face and choked her to the point of unconsciousness while the father was driving a car

with the child in the backseat. *Giovanni F.* held that, “[a]lthough many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a) may also apply.” (*In re Giovanni F.*, *supra*, at p. 599.) *Giovanni F.* concluded jurisdiction under “section 300, subdivision (a) is appropriate when, through exposure to a parent’s domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent.” (*Id.* at pp. 598-599.)

*Giovanni F.* reasoned: “Domestic violence is nonaccidental. When it occurs in a moving vehicle, the potential for injury inherent in the violence is dramatically increased by the likelihood of a collision that could prove fatal.” (*In re Giovanni F.*, *supra*, 184 Cal.App.4th at p. 600.) *Giovanni F.* concluded the father’s “violence in the car would have been sufficient, by itself, to support jurisdiction under section 300, subdivision (a).” (*Id.* at p. 601)

Here, the evidence showed father choked mother on numerous occasions. On one of these occasions, H.S. attempted to intervene to protect mother from father, thereby placing herself at risk of serious harm inflicted nonaccidentally by her parents. *In re Heather A.* (1996) 52 Cal.App.4th 183, commenting on domestic violence committed while the children were present in the home as a basis for jurisdiction under section 300, subdivision (b) noted: “Obviously, the children were put in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg . . . .” (*In re Heather A.*, *supra*, at p. 194.) Where, as here, a child attempts to intervene in an incident of domestic violence to protect one parent from the other, the risk of injury to the child rises to a level comparable to the risk of injury from a traffic collision in *Giovanni F.* such that jurisdiction under subdivision (a) is appropriate. (*In re Giovanni F.*, *supra*, 184 Cal.App.4th at p. 601.)

Mother attempts to distinguish *Giovanni F.* on the ground the father in that case was not incarcerated and thus represented a continuing risk to the mother and the child. Mother claims father did not present such a risk as he was housed at the California Youth

Authority at the time of the adjudication. However, father is serving a two year term which commenced in August of 2010. Thus, he soon will be released from custody and again will be in a position to place the children at risk of serious physical harm due to domestic violence.

The juvenile court also properly could consider that mother had a history of abuse that predated her involvement with father, mother's therapist opined mother had been conditioned to accommodate and expect abuse, and mother had become involved in another abusive relationship with L. Given father's imminent release from custody, father's history of domestic violence against mother and mother's predisposition to abusive relationships, the juvenile court reasonably could conclude that, at the time of the adjudication, the children remained at risk of serious physical harm inflicted nonaccidentally upon the child by the child's parent.

Because the juvenile court properly sustained the domestic violence allegation under section 300 subdivision (a), we need not consider whether the other counts are supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, they too find support in the record.

3. *The remaining counts properly sustained under section 300, subdivision (b).*

Section 300, subdivision (b) permits dependency jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." (§ 300, subd. (b).)

Mother contends there was no substantial evidence that, at the time of the jurisdiction hearing, any of the children were at risk of injury from maternal aunt F.A. because mother was not living with F.A. and F.A. had been institutionalized.

However, F.A. was institutionalized for only three weeks. Although mother indicated F.A.'s behavior had improved, the juvenile court reasonably could conclude, based on F.A.'s pre-hospitalization conduct, that F.A.'s mental illness and mother's



inability to protect H.S. and T.S. from F.A. placed all three children at risk of harm within the meaning of section 300, subdivisions (b) and (j).

Finally, mother contends there was no substantial evidence, at the time of the jurisdiction hearing, that mother would leave the children home alone or that mother's conduct in leaving the children with paternal grandmother exposed the children to risk of serious physical harm and there was no risk mother would leave the children without making a plan for their care.

However, even after mother came to the attention of the Department based on reports that 18 month old H.S. had been found walking alone in the street, a social worker found H.S. home alone during an unannounced visit. After the children were removed from mother's care, mother remained immature, she was not attending therapy and her visitation was affected adversely by her relationship with L. Thus, at the time of the adjudication, mother had not resolved the issues that brought the family to the attention of the Department. Consequently, the evidence supported the juvenile court's finding the children remained at risk of being left alone or without an appropriate plan for their care.

#### **DISPOSITION**

The orders of the juvenile court are affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.